

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5019 of 1992

Date of decision: 27-01-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

N D DATTAN

Versus

CHAIRMAN

Appearance:

MR A. M. Raval for Petitioner

MR RAJNI H MEHTA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/01/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner, an Executive Engineer, Drilling (DOC) Branch, of Oil and Natural Gas Commission, has filed this special civil application praying for declaration that non-consideration of the petitioner's case for promotion and stepping up of pay for a long time be declared to be illegal and arbitrary. Further prayer has been made for direction to the respondents to pay him forthwith benefits of stepping up of pay. The petitioner has further prayed for consequential benefits which flow from stepping up of his pay.

2. The claim of the petitioner for stepping up of his pay is based on the ground that his juniors have been given stepping up of pay and they are getting more pay. The petitioner entered in the service of Commission on 1-4-1961, when he was appointed as Rigman. Then he was promoted to different posts and lastly to the post of Executive Engineer. The final seniority list of Assistant Driller, who were appointed during the period from 1-4-1979 to 31-3-1982 was published by the Deputy Director (P.A.). The petitioner's name has been shown in the said seniority list at serial No.186. At serial No.291, name of one Mohinder Singh has been shown, and then the names of R.K. Beari and U.S. Hir at serial No.323 and 332 respectively. Shri Mohinder Singh, who was junior to the petitioner, had filed civil suit No.360/85 in the Civil Court at Mehsana, for stepping up of his pay and proper seniority and benefits, and his case was considered by the authorities. The petitioner has approached this court by filing this special civil application.

3. Two junior persons, namely, R.K.Beari and Shri U.S.Hir were getting higher pay than the petitioner, with effect from 23rd July, 1980. After filing civil suit by Mohinder Singh, the Commission considered his case and his pay was stepped up and brought equal to the pay which his juniors R.K. Beari and U.S. Hir were drawing. It is not in dispute that Mohinder Singh was given stepping up of his pay on 23rd July, 1980. Though the petitioner was senior to Mohinder Singh, the respondents were not considering the case of the petitioner.

4. In the reply, the Commission has given out that it has no objection to step up the pay of the petitioner with effect from 1-1-1984. In the reply it is not disputed by the respondent Commission that Mohinder Singh is junior to the petitioner. Affidavit in sur-rejoinder has been filed by the respondents and they have come up with the case that though special committee was

constituted to make 'out of court negotiations' with the petitioner. This Committee met on 9-3-1994 at Ahmedabad and persuaded the petitioner to settle the matter. The petitioner took time to consider. A meeting was again convened at Ahmedabad on 13-5-1994, but the petitioner refused to appear before the Committee despite repeated invitations. The Commission has come up with the case that in these facts and circumstances the case of the petitioner cannot be settled.

5. On the basis of the facts which are not in dispute between the parties, the position emerges as under:

The petitioner is senior to Shri Mohinder Singh, and Shri Mohinder Singh is senior to Shri U.S. Heer and Shri R.K. Beri. Shri Heer and Shri Beri have been given promotion and were given higher pay from 23rd July, 1980. Pay of Shri Mohinder Singh was stepped up with effect from 23rd July, 1980. The petitioner was offered to be given stepping up from 1-1-1984 by the respondents.

6. I do not find any justification in the action of respondent Commission in offering the petitioner to step up his pay from 1-1-1984. Admittedly the petitioner is senior to Mohinder Singh who has been given stepping up of pay from 23rd July, 1980, and as such the case of the petitioner deserves to be considered for stepping up of his pay from the said date. It is true that Sub Committee was constituted and the petitioner has refused to settle the matter. It is equally true that the petitioner has filed this writ petition before this court in the year 1992, and the same was pending at that time. In view of this fact, refusal of the petitioner to settle the matter will not amount to resjudicata or will not close the matter once for all. Taking into consideration the totality of the facts, the Commission should have considered the case of the petitioner in the light of the facts stated above, and in case he is found entitled for stepping up of his pay from 23rd July, 1980, then his claim with all consequential benefits should have been allowed. The approach of the Commission, that the petitioner has not appeared to settle the matter before the Special Committee and as such nothing has to be done, does not seem to be befitting an authority which is 'State' within the meaning of Article 12 of the Constitution.

7. Taking into consideration the totality of the facts of the case, the special civil application is disposed of with the direction to respondent No.2 to consider afresh the claim of the petitioner for stepping

up of his pay from 23rd July, 1980. In case the petitioner's claim for stepping up of his pay from 23rd July, 1980 is accepted, then the Commission shall further consider his case for giving him all consequential benefits for which the petitioner was found to be entitled and the same shall be paid to him. This exercise has to be completed by the respondent Commission within three months from the date of receipt of certified copy of this order and the petitioner shall be paid the amounts due to him within two months thereafter. In case the petitioner is not found entitled for stepping up of his pay from 23rd July, 1980, then a reasoned order shall be passed , and a copy thereof shall be sent to the petitioner by registered post. Subject to the aforesaid directions the special civil application stands disposed of. Rule stands discharged. No order as to costs.

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